

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DONALD GENE BLANTON,)	
ID # 1307891,)	
Petitioner,)	
vs.)	No. 3:17-CV-383-B (BH)
)	
LORIE DAVIS, Director,)	
Texas Department of Criminal)	
Justice, Correctional Institutions Division,)	
Respondent.)	

**RECOMMENDATION REGARDING REQUEST TO PROCEED
ON APPEAL WITHOUT PAYMENT OF FILING FEE AND
REQUEST TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Pursuant to *Amended Miscellaneous Order No. 6* (adopted by *Special Order No. 2-59* on May 5, 2005), before the Court is the petitioner's *Motion for Leave to File Motion to Show Petitioner Exemption from Paying Fees on Void Transfer Order Due to Lack of Jurisdiction*. (Doc. 36.) The motion was filed in the United States Court of Appeals for the Fifth Circuit and was received on July 17, 2017. (*Id.* at 1.) The Fifth Circuit forwarded the motion to this Court as a motion to proceed *in forma pauperis* on appeal. (*Id.* at 20.)

The petitioner's 28 U.S.C. § 2254 habeas petition was transferred to this Court from the United States District Court for the Eastern District of Texas. (Doc. 2.) The petition was then transferred to the United States Court of Appeals for the Fifth Circuit as a successive habeas petition. (Doc. 19.) The Fifth Circuit denied authorization to proceed with the successive petition. (Doc. 34); *In re Blanton*, No. 17-10587 (5th Cir. July 17, 2017). The petitioner has a pending appeal from three orders in this case. (Docs. 25, 28, 30); *Blanton v. Davis*, No. 17-10686 (5th Cir.).

Petitioner argues that he should be exempt from paying the filing fee on appeal because the order transferring the habeas case to this Court from the United States District Court for the Eastern

District of Texas was void. He does not point to any statute or rule exempting him from the appellate filing fee. He is not exempt from paying the filing fee, and his motion to be exempt should be **DENIED**.

To the extent that the motion is construed as a motion for leave to proceed *in forma pauperis* on appeal, it should be **DENIED**, because the Court should certify pursuant to Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3) that the appeal is not taken in good faith and that the appeal presents no legal points of arguable merit and is therefore frivolous. If the Court denies the request to proceed *in forma pauperis* on appeal, the movant may challenge the denial by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within thirty days after service of the notice required by Fed. R. App. P. 24(a)(4). See Fed. R. App. P. 24(a)(5).

SO RECOMMENDED this 20th day of July, 2017.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE